INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute and regulations involved	2
Statement	2
Summary of Argument	3
Argument:	
Section 421 of the Internal Revenue Code of 1939 exempted income of a deceased serviceman to the date of his death, not income earned by his estate subsequent to his death	7
A. The exemption in terms applies to the individual, not to his estate	10
B. The "taxable year" to which the statute refers is the individual serviceman's taxable year, ending with his death	17
C. Analysis of the effects of the decision below buttresses the conclusion that the court misconstrued the statutory language	23
Conclusion	27
Appendix	28

CITATIONS

Cases:	
Allen v. *Bickerstaff*, 200 F. 2d 181	4, 9
Brewster v. *Gage*, 280 U. S. 327	24
Bull v. *United States*, 295 U. S. 247	11
Central Union Trust . of New York v. *United States*, 63 C. Cls. 619, certiorari denied, 275 U. S. 555	11
Cyrus H. K. Curtis, Estate of, 36 B. T. A. 899	19
B. Brasley Cohen, Estate of v. *Commissioner*, 8 T. C. 784	24

Cases—Continued Page

Guaranty Trust Co. of New York v. *Commissioner*, 30 B. T. A. 314 24
Hartley v. *Commissioner*, 295 U. S. 216 ..... 4, 11
Helvering v. *Enright*, 312 U. S. 636 11
Helvering v. *Northwest Steel Mills*, 311 U. S. 46 .. 26
Lloyd v. *Delaney*, 181 F. 2d 941 ..... 4, 12, 13, 14, 16
Putnam, Estate of v. *Commissioner*, 324 U. S. 393 .. 11
United States v. *Stewart*, 311 U. S. 60 26
Weber v. *Commissioner*, 111 F. 2d 766 24

Statutes:

Act of August 5, 1947, c. 496, 61 Stat. 778, Sec. 1 .. 7, 15
Current Tax Payment Act of 1943, c. 120, 57 Stat. 126, Sec. 8 7
Internal Revenue Code of 1954, Sec. 692 ..... 8, 14
Internal Revenue Code of 1939, 26 U. S. C. (1952 ed.):
Section 11 10
Section 12 10
Section 13 10
Section 15 10
Section 23 13
Section 42 ..... 5, 11, 21
Section 43 ..... 5, 11, 21
Section 47 ..... 5, 11, 18
Section 48 ..... 5, 18, 19
Section 126 ..... 5, 11, 21, 22
Section 142 11
Section 154 ..... 8, 14
Section 161 ..... 10, 11
Section 162 ..... 11, 13, 24
Section 421 ..... 2, 3, 5, 6, 7, 8, 11, 14, 19, 25, 28
Revenue Act of 1941, c. 412, 55 Stat. 687 (26 U. S. C. 1952 ed., Sec. 42), Sec. 114 21
Revenue Act of 1942, c. 619, 56 Stat. 798:
Section 134 (26 U. S. C. 1952 ed., Sec. 42) .. 21
Section 135 (26 U. S. C. 1952 ed., Sec. 47) .. 18
Revenue Act of 1951, c. 521, 65 Stat. 452:
Section 334 (26 U. S. C. 1952 ed., Sec. 154) .. 8, 14
Section 345 12

Statutes—Continued Page

Technical Changes Act of 1953, c. 512, 67 Stat. 615 (26 U. S. C. 1952 ed., Supp. I, Sec. 154), Sec. 104 ..... 8, 14

Miscellaneous:

H. Conf. Rep. No. 510, 78th Cong., 1st Sess., pp. 68, 69 (1943 Cum. Bull. 1351, 1381, 1382) .. 15

H. Rep. No. 401, 78th Cong., 1st Sess., pp. 21, 42–43 (1943 Cum. Bull. 1283, 1299, 1314) 14, 15

H. Rep. No. 1006, 80th Cong., 1st Sess., pp. 1–2 .. 16

H. Rep. No. 1337, 83d Cong., 2d Sess., p. A221 .. 16

S. Rep. No. 221, 78th Cong., 1st Sess., p. 48 (1943 Cum. Bull, 1314, 1349) 15

S. Rep. No. 711, 80th Cong., 1st Sess., pp. 1–2 .. 16

S. Rep. No. 781, 82d Cong., 1st Sess., p. 52 (1951–2 Cum. Bull. 485, 495) 16

S. Rep. No. 1622, 83d Cong., 2d Sess., p. 376 16

Treasury Regulations 111 (promulgated under the Internal Revenue Code of 1939).

Section 29.47–1 ..... 5, 18

Section 29.154–1 (as added by T. D. 5976, 1953–1 Cum. Bull. 26, 29) 16

Section 29.421–1 (as added by T. D. 5305, 1943 Cum. Bull. 260, 271, and amended by T. D. 5645, 1948–2 Cum. Bull. 14, 23) .. 16, 25, 29

Treasury Regulations 118:

Section 39.154–1 16

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 368

JOSEPH P. MARCELLE, PETITIONER

v.

ESTATE OF RAYMOND LUPIA, BRUNO LUPIA AND AMELIA LUPIA, EXECUTORS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the District Court (R. 10–12) is reported in 109 F. Supp. 6. The opinion of the Court of Appeals (R. 14–18) is reported in 214 F. 2d 942.

JURISDICTION

The judgment of the Court of Appeals was entered on July 2, 1954. The petition for a writ of certiorari was filed on September 27, 1954, and granted on November 15, 1954. (R. 19.) The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

Section 421 of the Internal Revenue Code of 1939 provided that "In the case of any individual" who dies while in active service as a member of the armed forces, the income tax "shall not apply with respect to the taxable year in which falls the date of his death". The question presented is whether the statute, in addition to forgiving the income tax liability of the deceased serviceman up to the date of his death, also cancels the liability of his estate in respect to income realized by it subsequent to the serviceman's death but within the same year.

STATUTE AND REGULATIONS INVOLVED

The statutory provision involved is Section 421 (a) and (b) of the Internal Revenue Code of 1939 and the Treasury Regulations involved are Section 29.421–1 of Treasury Regulations 111; both are set forth in the Appendix, *infra,* pp. 28–31.

STATEMENT

The facts in this case, which are undisputed, are as follows:

Technical Sergeant Raymond B. Lupia, the decedent, died on January 7, 1945, while serving as a member of the armed forces of the United States. During his lifetime, he filed his income tax returns on a calendar year basis. He was a member of a business partnership which filed its

income tax returns on the basis of a fiscal year ending June 30. (R. 1–3, 8.)

For the fiscal year ended June 30, 1945, the partnership credited to Raymond Lupia, deceased, the sum of $7,916.61 as his share in the partnership income, and credited a share in the amount of $8,184.05 to the estate of Raymond Lupia, which latter amount was for the period January 7 to June 30, 1945. No tax was paid with respect to the partnership income credited to Raymond Lupia. However, the taxpayer-estate filed a timely income tax return for the period January 7 to December 31, 1945, reporting the $8,184.05 partnership income credited to it upon which a tax of $2,039.52 was paid. (R. 2–3, 8.)

On December 11, 1946, the taxpayer filed a claim for refund of the income tax paid by it for 1945 (R. 3) and, more than six months thereafter, on March 13, 1952, instituted this suit against the Collector for refund thereof (R. 1). Upon a motion for summary judgment (R. 7), the District Court entered an order granting the taxpayer a summary judgment in the amount sought with interest (R. 13).

The Collector appealed and the Court of Appeals affirmed the decision of the District Court. (R. 14–18.)

SUMMARY OF ARGUMENT

Section 421 grants an exemption solely for the individual serviceman for *his* taxable year, which

ends with his death. It does not exempt income earned by his estate after his death. This conclusion follows from the statutory language, especially when the language is considered in the context of the Internal Revenue Code. It is fortified by consideration of the incongruities resulting from the decision below.

A. "The revenue acts consistently treat the estate of a decedent in the hands of an administrator or executor as a separate taxpayer." *Hartley* v. *Commissioner*, 295 U. S. 216, 218. In the light of this consistent pattern, it is significant that Section 421 refers solely to the individual and his tax liability, nowhere to his estate and its tax liability. See *Lloyd* v. *Delaney*, 181 F. 2d 941, 943 (C. A. 1). The language affords "no warrant * * * for holding that the abatement extends also to the income tax due by such an individual's estate." *Allen* v. *Bickerstaff*, 200 F. 2d 181, 182 (C. A. 5). Like the language, its legislative history and contemporaneous Treasury Regulations point to the same conclusion.

B. The "taxable year" to which the statute refers is the individual serviceman's taxable year, ending with his death. True, as the court below emphasized (R. 16–17), the reference to "the taxable year in which falls the date of his death" might well be read, when considered alone, to describe a period extending beyond his death. However, in the usage established by related sec-

tions of the Internal Revenue Code, it is clear that the quoted phrase aptly describes the individual serviceman's taxable year and that this is a period ending with his death. Thus, Section 47 (g) provides that, for a taxpayer in existence for less than a full calendar year, the return shall be for the fractional part of the year during which the taxpayer was in existence. And Section 48 (a) defines "taxable year," in the case of a return made for less than a full year, as "the period for which such return is made." In accordance with this scheme, Treasury Regulations 111, Section 29.47–1, provides that "The return of a decedent *for the taxable year in which falls the date of his death* is a return for the period during which he was alive." (Emphasis added.) The same usage is employed elsewhere in the Code. Sections 42 (a), 43, 126 (a) (1), 126 (b).

In the light of this usage, Section 421 is plainly harmonious and consistent when it refers only to the individual and to a single taxable year. Under the construction of the court below, there are not only two taxable entities (individual and estate), but two necessarily separate taxable years (the individual's and the estate's) to be covered by the singular nouns of the statute. But the justification for this extension disappears when it is recognized that "the taxable year in which falls the date of his death" exactly describes the serviceman's own taxable year, ending with his death.

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C. It frequently happens that an individual's survivors, rather than his estate, receive taxable income from property acquired from him immediately upon his death. This is true where his will directs income distributions to them, where (as with realty) his death immediately vests title in them, or where they were joint owners with him with rights of survivorship. There is no basis in Section 421, and the decision below suggests none, for extending the exemption of Section 421 to such persons. For if it be assumed that "individual" may be read to cover both an individual and his estate, it certainly cannot be read to cover one individual plus other individuals. And so, under the decision below, it may well result that those nearest a deceased serviceman pay taxes on the income of property derived directly from him while those taking from the estate of another serviceman are granted an exemption. This probable incongruity only highlights, in our view, the error of the court below. It demonstrates the propriety of confining the exemption to the terms of the statute. These cover the income of the deceased serviceman during his taxable year, not the income of his estate and its separate taxable year.

ARGUMENT

SECTION 421 OF THE INTERNAL REVENUE CODE OF 1939 EXEMPTED INCOME OF A DECEASED SERVICEMAN TO THE DATE OF HIS DEATH, NOT INCOME EARNED BY HIS ESTATE SUBSEQUENT TO HIS DEATH

Section 421 of the Internal Revenue Code of 1939, as it read during the period involved in this case, provided:

> In the case of any individual who dies on or after December 7, 1941, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations and prior to January 1, 1948—
>
> (a) the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (ending on or after December 7, 1941) during any part of which he was a member of such forces * * *.[1]

[1] The quoted Section 421, which applies here, was added to the Internal Revenue Code of 1939 by Section 8 of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126, and amended by Section 1 of the Act of August 5, 1947, c. 496, 61 Stat. 778. It expired by its own terms on December 31, 1947. Subsequent provisions incorporated in the Code as Section 421 were concerned with other matters. Provisions similar to those at issue here, relating to members of the

The narrow question in this case is whether this provision forgives only the taxes of a deceased serviceman for his taxable year (which ends with the date of his death) or whether it forgives in addition the taxes on the income of his estate during the remainder of what would have been the serviceman's taxable year had he not died. It is the Government's position that the statute in plain language applies to the individual and that "*the* taxable year" to which it refers is *his* taxable year, ending with his death. The estate of such an individual, from the date of his death, is clearly a separate taxable entity with a separate taxable year, separately identified and separately taxed in the pertinent provisions of the Internal Revenue Code. We think the court below erred in extending to income earned by the estate after the serviceman's death the exemption granted in Section 421.

Adopting the position urged here, in a decision directly in conflict with that of the court below,

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armed forces dying while serving in a combat zone during the period June 24, 1950, to January 1, 1954, were contained in Section 154 of the Internal Revenue Code of 1939, which was added by Section 334 of the Revenue Act of 1951, c. 521, 65 Stat. 452 (26 U. S. C. 1952 ed., Sec. 154). The expiration date of this provision was extended to January 1, 1955, by Section 104 of the Technical Changes Act of 1953, c. 512, 67 Stat. 615 (26 U. S. C. (1952 ed., Supp. I) Sec. 154). Substantially identical provisions have been embodied in Section 692 of the Internal Revenue Code of 1954, but without any termination date.

the Court of Appeals for the Fifth Circuit declared (*Allen* v. *Bickerstaff*, 200 F. 2d 181, 182):

> We are unable to discern in the language of the statute any evidence of Congressional intent to abate or forgive income tax due by any taxable entity other than the individual serviceman. The statute is expressly restricted to the case "of any individual" who dies in active service. We find no warrant in the statute for holding that the abatement extends also to the income tax due by such an individual's estate. The statute relates to individual liability and not estate liability. The two are entirely different, as is well recognized by the provisions of the Internal Revenue Code. The statute in question deals with individual liability and its language "taxable year in which falls the date of his death" does not provide an extension of the abatement or forgiveness to include all taxes which the serviceman would otherwise have been required to pay had he lived. Such a construction would be necessary to support a holding that the abatement related to the estate for the remainder of the taxable year in which the serviceman died, as well as to those which accrued during the lifetime of the individual. "Taxable year" as defined by the statute may mean either a whole or a fractional year, and the use of this term is not sufficient to authorize importation of estate liability into the exemption provided for individual liability. [Footnotes omitted.]

There is no disagreement, to be sure, with the observation of the court below (R. 11, 12) that since Section 421 relates to a deceased serviceman, the exemption it confers necessarily benefits his estate and his beneficiaries. But it by no means follows that the exemption for the serviceman's income and the serviceman's taxable year extends to income earned by his estate—or, indeed, by the heirs or devisees who receive his property—after his death. The problem is simply to determine the scope of the exemption—to whose income it applies and for what period. In the discussion which follows, we undertake to show that the solution reached by the Fifth Circuit is correct; that it accords not only with the language of Section 421 but with the scheme of separately taxing individuals and their estates to which this provision must be related; and that the alternative adopted by the court below introduces anomalies and inconsistencies which further demonstrate its error.

A. THE EXEMPTION IN TERMS APPLIES TO THE INDIVIDUAL, NOT TO HIS ESTATE

The income tax levied by Chapter 1 of the Internal Revenue Code of 1939 is imposed upon three separate and distinct classes of taxpayers—(1) individuals (Secs. 11 and 12), (2) corporations (Secs. 13 and 15), and (3) estates and trusts (Sec. 161). "The revenue acts consistently treat the estate of a decedent in the hands of an

administrator or executor as a separate taxpayer." *Hartley* v. *Commissioner,* 295 U. S. 216, 218. Of necessity, a final return, relating to the taxable period ending with the date of death, must be filed on behalf of a decedent by his executor or administrator. *Central Union Trust Co. of New York* v. *United States,* 63 C. Cls. 619, certiorari denied, 275 U. S. 555. It is nevertheless clear beyond dispute that income includible in the decedent's final return is distinct from income which is thereafter taxed to his estate, or is taxed directly to his beneficiaries. See Sections 42 (a), 43, 47 (g), 126, 142, 161 and 162 of the Internal Revenue Code of 1939 (26 U. S. C. 1952 ed., Sections 42, 43, 47, 126, 142, 161 and 162). Cf. *Bull* v. *United States,* 295 U. S. 247; *Hartley* v. *Commissioner,* 295 U. S. 216, 218; *Helvering* v. *Enright,* 312 U. S. 636; *Estate of Putnam* v. *Commissioner,* 324 U. S. 393.

At least when it is read with this consistent pattern of which it is a part, the language of Section 421 seems clearly to exempt only the income of the deceased serviceman, not income earned by and taxable to his estate after his death. The section is declared at its outset to apply "In the case of any *individual* who dies * * * while in active service as a member of the military or naval forces" (emphasis added). There is no reference to the subsequent income of the individual's estate or of his beneficiaries.

Only the individual is named—in a context where individual and estate are treated separately throughout. As Chief Judge Magruder has said, writing for the Court of Appeals for the First Circuit in *Lloyd* v. *Delaney*, 181 F. 2d 941, 943:

> When in subsection (a) Congress refers to "the tax imposed by this chapter", the natural inquiry is, whose tax are they talking about? The answer is found in the limiting language of the introductory clause of the section: "In the case of any individual" who dies in active service, etc. The meaning is the same as if by transposition of language the section had read as follows: "The tax imposed by this chapter in the case of any individual who dies on or after December 7, 1941, while in active service as a member of the military or naval forces of the United States * * * shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (ending on or after December 7, 1941) during any part of which he was a member of such armed forces."[2]

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[2] Holding the exemption in Section 421 applicable only to the individual serviceman's income, the Court concluded in *Lloyd* v. *Delaney* that income accumulated by a trust for his benefit, and, in the event of his death, for the benefit of his issue, remained taxable to the trust. Thereafter, in Section 345 of the Revenue Act of 1951, c. 521, 65 Stat. 452, Congress altered this result by allowing a deduction to the trust in such cases where accumulated income not distributed to the serviceman before his death "was payable by the trust

Not only is the language of Section 421 aptly suited on its face to refer to the individual, and to the individual alone, but it follows the form repeatedly used in the Revenue Code to define the scope of coverage. To cite only a few random examples, Section 23 (a) (2), relating to deductions for certain expenses, applies "[i]n the case of an individual"; Section 23 (f) deals with losses "[i]n the case of a corporation"; Section 23 (k) (4) concerns deductions for non-business bad debts "[i]n the case of a taxpayer, other than a corporation"; and Section 162, undertaking, with certain exceptions, to treat estates and trusts like individuals (not, it may be emphasized, merely as extensions of the individuals from whose deaths or conveyances they arise), provides for computation of their income "as in the case of an individual * * *."[3] In each instance, legislating in an area of well-worked technical meanings, the objective is to say no more and no less than what is meant. And so, we think, when Section 421 refers to "the tax imposed" "[i]n the case of any

at or after his death only to his estate, spouse, or lineal ancestors or descendants." Of interest for present purposes is the fact that the cut-off point for this relief provision is the date of the serviceman's death. It does not apply to income accumulated by the trust for the benefit of his estate or his beneficiaries after his death.

We agree with the court below (R. 18) that the *Lloyd* case is distinguishable from this one. Its reasoning, however, accords with the view we urge here.

[3] The references are all to the Internal Revenue Code of 1939, 26 U. S. C. (1952 ed.), which is applicable in this case.

individual," it means just that, not the tax imposed in the case of his estate or his beneficiaries.

In conformity with the body of the statute, Section 421 was captioned, "Abatement of Tax for Members of Armed Forces upon Death."[4] Here, again, the reference is to the individual serviceman and his taxes. The abatement is described as coming into effect "upon death," which is the point marking the end of the individual's accruing tax liabilities and the end of the taxable period for which his taxes are payable. See pp. 17–23, *infra*.

Like the statutory language, its "legislative history all indicates that what Congress was concerned with was the *individual income tax liability* of members of the armed forces dying in active service." *Lloyd* v. *Delaney, supra,* at 944 (emphasis added). In its general discussion of this provision, the Report of the House Committee on Ways and Means said (H. Rep. No. 401, 78th Cong., 1st Sess., p. 21 (1943 Cum. Bull. 1283, 1299)):

> Another relief provision *applies to individuals* dying in the active service as a

[4] The counterparts of Section 421 in subsequent statutes have had similar captions: "Income Taxes of Members of Armed Forces upon Death" (Internal Revenue Code of 1939, Section 154, as added by Section 334 of the Revenue Act of 1951, c. 521, 65 Stat. 452, and amended by Section 104 of the Technical Changes Act of 1953, c. 512, 67 Stat. 615); "Income Taxes on Members of Armed Forces on Death" (Internal Revenue Code of 1954, Section 692).

> member of the military or naval forces of the United States. Any Federal income tax which is outstanding at the time of the death of such individual (including interest, additions to the tax, and additional amounts) is abated and if collected after the date of death will be refunded. [Emphasis added.]

And in its detailed discussion of the provision, the same Report (pp. 41–42, 1943 Cum. Bull. at 1314) stated: "Supplement U relieves a member of the military or naval forces of the United States who dies in active service from the liability for the tax imposed by chapter 1 for the taxable year in which falls the date of his death." Substantially identical descriptions of the bill appear in the Senate and Conference Reports. S. Rep. No. 221, 78th Cong., 1st Sess., p. 48 (1943 Cum. Bull. 1314, 1349); H. Conf. Rep. No. 510, 78th Cong. 1st Sess., pp. 68, 69 (1943 Cum. Bull. 1351, 1381, 1382).[5] Everywhere, the references

[5] The subsequent history of Section 421 confirms the congressional purpose to deal only with the individual tax liability of the deceased serviceman. As originally enacted, Section 421 not only extended relief with respect to the individual's tax for the taxable year in which he died, but abated any tax unpaid at death for any earlier taxable year. Income taxes paid prior to death for prior taxable years were not refundable, even though they related to years in which he had served in the armed forces. The effect of this was to encourage delay in the payment of taxes since, except for the tax liability for the year in which death occurred, there was no refund of taxes paid prior to death. To correct the inequities resulting from this situation, Section 1 of the Act

are to the deceased serviceman and his tax liabilities; nowhere is there any suggestion that the exemption is to carry forward to income earned by the serviceman's estate after his death.

Finally, contemporaneous Treasury Regulations, paraphrasing Section 421 as the First Circuit later did in *Lloyd* v. *Delaney* (*supra*, p. 12), provide that "the tax liability in the case of such individual under chapter 1 for the taxable year in which occurs the date of death is canceled." Treasury Regulations 111, Section 29.421–1 (a), Appendix, *infra*, p. 29.[a] The

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of August 5, 1947, c. 496, 61 Stat. 778, amended Section 421 of the Internal Revenue Code of 1939 so as to relieve from income tax an individual who died while in active service, the relief being for the taxable year in which fell the date of his death and for prior taxable years (after December 7, 1941) in which he was a member of the armed forces, as well as for taxes remaining unpaid for years before his service in the armed forces. Again, the Committee Reports are clear to the effect that Congress was dealing with the tax liability of the individual serviceman; again, there is not the slightest suggestion that it intended to relieve his estate of any tax liability with respect to income earned by it after his death. H. Rep. No. 1006, 80th Cong., 1st Sess., pp. 1–2; S. Rep. No. 711, 80th Cong., 1st Sess., pp. 1–2.

Similar descriptions appear in the legislative reports on subsequent enactments corresponding to Section 421 (note 1, pp. 7–8, *supra*). See S. Rep. No. 781, 82d Cong., 1st Sess., p. 52 (1951–2 Cum. Bull. 458, 495); H. Rep. No. 1337, 83d Cong., 2d Sess., p. A221; S. Rep. No. 1622, 83d Cong., 2d Sess., p. 376.

[a] Like provisions appear in Section 29.154–1 of Treasury Regulations 111, as added by T. D. 5976, 1953–1 Cum. Bull. 26, 29, and in Section 39.154–1 of Treasury Regulations 118, promulgated under the Internal Revenue Code of 1939,

pertinent materials—statute, history, and regulations—all pertain, in short, precisely and exclusively to the individual and his liability.

B. THE "TAXABLE YEAR" TO WHICH THE STATUTE REFERS IS THE INDIVIDUAL SERVICEMAN'S TAXABLE YEAR, ENDING WITH HIS DEATH

The court below thought (R. 16–17) that "the use of the phrase 'taxable year in which falls the date of his death' contemplates * * * the existence of a period which may extend beyond the serviceman's death, *i. e.*, his normal taxable year." It concluded, therefore (R. 17), that the reference exclusively to the "individual" "was not intended to draw a distinction between the income taxes of such an individual and those of his estate with respect to the taxable year in which death occurred." While that analysis is undoubtedly persuasive when the language upon which it rests is considered in isolation, it becomes unsatisfactory, we think, when the language is examined in the context of the sentence and the Code in which it appears. For such examination discloses (1) that Section 421 refers to a single entity (the individual) with a single taxable year, whereas the individual plus his estate are two taxable entities with separate taxable years; and (2) that "the taxable year in which falls the date

applicable only to years beginning after December 31, 1951, interpreting Section 154 of the Internal Revenue Code of 1939, which, as we have noted (*supra*, pp. 7–8, n. 1) is a later enactment corresponding to Section 421.

of [the individual's] death" is a period ending with, not extending beyond, his death.

Section 47 (g) of the Internal Revenue Code of 1939 [7] provides:

> In the case of a taxpayer not in existence during * * * the whole of a calendar year, the return shall be made for the fractional part of the year during which the taxpayer was in existence.

Subsection (b) of the same Section provides that—

> * * * where a separate return is required or permitted, by regulations prescribed by the Commissioner with the approval of the Secretary, to be made for a fractional part of a year, then the income shall be computed on the basis of the period for which separate return is made.

And Section 48 ("Definitions"), subsection (a),[8] provides:

> * * * "Taxable year" means, in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the Commissioner with the approval of the Secretary, the period for which such return is made.

Following and implementing these statutes, sec-

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[7] Added to Section 47 by Section 135 (c) of the Revenue Act of 1942, c. 619, 56 Stat. 798 (26 U. S. C. 1952 ed., Sec. 47 (g)).

[8] As amended by Section 135 (d) of the Revenue Act of 1942, *supra*, note 7 (26 U. S. C. Sec. 48 (a)).

tion 29.47–1 of Treasury Regulations 111 provides that "The return of a decedent *for the taxable year in which falls the date of his death* is a return for the period during which he was alive." (Emphasis added.)

Applying these provisions to the case of respondent's testator—or to that of any other deceased serviceman whose income is exempted by Section 421—it is clear that the "taxable year in which [fell] the date of his death" was the portion of the calendar year ending with his death.[9] It is equally clear that the "taxable year" of his estate is a separate period, beginning with the date of his death and extending to either (1) the end of the calendar year or (2) the end of any month other than December if the estate is administered on a fiscal-year basis. See 26 U. S. C. 1952 ed., Sec. 48 (b); and see *Estate of Cyrus H. K. Curtis,* 36 B. T. A. 899, appeal dismissed December 1, 1938 (C. A. 3d). When these facts are recognized, the construction adopted by the court below, though reasonable if Section 421 is considered by itself as a purely grammatical proposition, is found to be irreconcilable with the meaning of the terms in their technical context. The Section refers to a single "individual" and to "the taxable year"—a single taxable year—in

[9] Respondent's testator was a calendar year taxpayer (R. 8). For the case of a serviceman on a fiscal-year basis the "taxable year in which falls the date of his death" would, of course, be the fraction of his fiscal year ending with his death.

which his death falls. These words accomplish exactly the result for which we contend, and no more; they exempt from the income tax the serviceman's income for the taxable period ending with his death.

On the other hand, the alternative adopted by the court below not only adds immediately to what Congress wrote, but raises unanswered questions which may require still further alteration. To illustrate, the court concludes that the estate must be exempted from the income tax for the remainder of the calendar year which would have been part of the deceased serviceman's "taxable year" had he lived. But not only is this period not the taxable year of the decedent; it may not be the taxable year of the estate either. As we have noted, the estate may return its taxes on the basis of a fiscal year. If so, is the estate's income exempt only until the end of the calendar year, though this does not cover a "taxable year" of the estate at all? Or is it exempt for its full fiscal year, though this extends beyond what would have been the decendent's taxable year? The statute, referring only to "the taxable year," affords no answer to these questions. And the reason, we submit, is that the reference is related to the individual the statute describes, not his estate, and exempts only his income for his taxable year, which ends with his death.

The problem would be simpler, to be sure, had Congress spoken in terms of a "taxable period ending with the individual's death" rather than "the taxable year in which falls the date of his death." But whatever merit such phraseology might have had as an isolated matter of language, the terms actually employed achieve the precise result we urge when they are fitted to the scheme of the Code. Moreover, sections of the Code other than those we have already mentioned embody the same usage. Thus, Sections 42 (a)[10] and 43[11] provide that, in the case of the death of a taxpayer whose net income was computed by the accrual method of accounting, income, deductions and credits accrued "only by reason of the death of the taxpayer shall not be" included or allowed "in computing net income for the *period in which falls the date of the taxpayer's death.*" (Emphasis added.) Complementing those provisions, Section 126 (a) (1)[12] provides that income in respect of a decedent which is "not properly includible in respect of the *taxable period in which falls the date of his death* or a prior period" (emphasis added) shall be included in the taxable year of receipt in the gross income of the

[10] As amended by Section 114 of the Revenue Act of 1941, c. 412, 55 Stat. 687, and Section 134 (a) of the Revenue Act of 1942, c. 619, 56 Stat. 798 (26 U. S. C. 1952 ed., Sec. 42).

[11] As amended by Section 134 (b) of the Revenue Act of 1942, *supra*, note 10 (26 U. S. C. 1952 ed., Sec. 43).

[12] Section 126 was added by Section 134 (e) of the Revenue Act of 1942, *supra*, note 10 (26 U. S. C. 1952 ed., Sec. 126).

decedent's estate, or of the person acquiring the right to receive the amount either directly, as a result of the decedent's death, or from the estate. Section 126 (a) (3), in providing for the determination of the character of such income, places the person acquiring the right to receive it in the same position as the decedent, and specifies that the amount includible in gross income "shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount." Section 126 (b), with reference to certain deductions and credits "not properly allowable to the decedent in respect of *the taxable period in which falls the date of his death,* or a prior period" (emphasis added), provides for the allowance of these deductions and credits when paid to the estate of the decedent or, if the estate is not liable for the obligation to which the deduction or credit relates, to the person who has acquired an interest in property directly as a result of the death of the decedent or from his estate subject to such obligation. Throughout these provisions, the references to "the period *in which* [not "at the end of which"] falls the date of the taxpayer's death" describe a period ending with the taxpayer's death. The purpose of these sections is to divide the deceased taxpayer's tax liabilities, terminating their accrual with his death, from those of taxable entities (his estate or legatees)

whose liabilities for income tax on his income-producing property commence with his death. And the purpose is accomplished through language substantially identical with that of Section 421.

Thus, the construction we urge is supported not only by the need to harmonize the statutory reference to a single "taxable year" with its coverage of a single "individual," but by the fact that comparable usage in related sections of the Code points precisely to this result. It is not inappropriate, we think, to appraise the technical terms of the taxing statutes in their technical context. And although the Collector's "technical reading" is condemned by the court below (R. 16), it turns out that the court's alternative produces gaps and incongruities in the statute's operation which cannot be justified by any supposed congressional purpose. We turn, finally, to some of the problems raised rather than settled by the decision below.

C. ANALYSIS OF THE EFFECTS OF THE DECISION BELOW BUTTRESSES THE CONCLUSION THAT THE COURT MISCONSTRUED THE STATUTORY LANGUAGE

Though the decision below equates the deceased serviceman's estate with the serviceman for the remainder of what would have been the serviceman's taxable year had he lived, there is no suggestion that a similar identity exists between the serviceman and his heirs, legatees, or other sur-

vivors. Yet odd results follow unless the decision is extended in this way.

The Code recognizes and provides for the numerous situations where survivors, not the estate, begin immediately upon a decedent's death to realize taxable income from property left to them. A will may provide that income of the estate "is to be distributed currently * * * to the legatees," in which case such income is taxable to the legatees, not to the estate. 26 U. S. C. 1952 ed., Sec. 162 (b). Real property, passing directly to heirs or devisees (see *Brewster* v. *Gage*, 280 U. S. 327, 334), may produce income for these takers, taxable to them and not to the estate. See *Weber* v. *Commissioner*, 111 F. 2d 766 (C. A. 2); *Guaranty Trust Co. of New York* v. *Commissioner*, 30 B. T. A. 314; cf. *Estate of B. Brasley Cohen* v. *Commissioner*, 8 T. C. 784. Property owned jointly by serviceman and spouse may vest exclusively in the latter, rendering her solely taxable on its income after his death.

There is no remote basis in Section 421 for holding that in such likely cases as we have enumerated the survivors of the serviceman enjoy an exemption from their individual tax liability for the remainder of what would have been his taxable year. If "individual" can be read to encompass the individual plus his estate, it surely cannot be read to encompass the individual plus some uncertain number of additional individuals. But unless this extra addition is placed upon the

statute, the most obvious objects of the serviceman's bounty may find themselves liable for income taxes from the date of his death if they take property directly from him, while survivors of another serviceman, taking through his estate, are benefited by an exemption.

Discussion of such substantial possibilities as we have suggested could be extended. Enough has been said, we think, to demonstrate that the Collector's technical reading is actually the only one which renders Section 421 coherent, consistent, and complete. This is so from the standpoint of both the statutory language and the possible consequences of the lower court's alternative construction.

It is true, as the court below observed (R. 18), that the interpretation urged here has the effect of ending the exemption with the serviceman's death though the liability forgiven may reach behind the beginning of his service. But the decisive point remains that these terminal points cover the liability of the *individual serviceman* to whom the exemption is explicitly limited.[13] And it is

[13] Thus, although the statute forgives the serviceman's tax liability for prior years, there is no comparable cancellation for the wife, even where joint returns may have been filed. Implementing this restriction, Section 29.421–1 of Treasury Regulations 111, Appendix, *infra*, p. 30, provides that "the tax abated, credited, or refunded [for prior years] * * * shall be an amount equal to that portion of the joint tax liability which is the same percentage of such joint tax liability as a tax computed upon the separate income of such individual is of the sum of the taxes computed upon the separate incomes of such individual and his spouse * * *."

not surprising, either as an original proposition or in the context of the Code, that an exemption accorded on account of death should treat the date of death as significant.

We reemphasize, in conclusion, that the narrow problem in this case is simply to define the scope of the exemption Congress wrote. Because it is concerned with servicemen dying in service, whose rightful claims upon the nation's generosity ought not to be weighed in a niggardly spirit, Section 421 may well warrant discarding the customary principle of strict construction applied to statutes creating exemptions. *Helvering* v. *Northwest Steel Mills,* 311 U. S. 46, 49; *United States* v. *Stewart,* 311 U. S. 60, 71. But it does not follow that the exemption may be extended beyond the limits Congress authorized. We think the decision below effects such an extension—uncertain in its dimensions and, in any event, unauthorized by the language of the statute.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be reversed.

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JANUARY 1955.

APPENDIX

Internal Revenue Code of 1939:

SEC. 421 [As added by Sec. 8 of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126, and as amended by Sec. 1 of the Act of August 5, 1947, c. 496, 61 Stat. 778]. ABATEMENT OF TAX FOR MEMBERS OF ARMED FORCES UPON DEATH

In the case of any individual who dies on or after December 7, 1941, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations and prior to January 1, 1948—

(a) the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (ending on or after December 7, 1941) during any part of which he was a member of such forces; and

(b) the tax under this chapter and under the corresponding title of each prior revenue law for taxable years preceding those specified in clause (a) which is unpaid at the date of his death (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(26 U. S. C. 1946 ed., Supp. II, Sec. 421.)

Treasury Regulations 111, promulgated under the Internal Revenue Code of 1939:

> SEC. 29.421-1 [As added by T. D. 5305, 1943 Cum. Bull. 260, 271, and amended by T. D. 5645, 1948-2 Cum. Bull. 14, 23]. *Abatement of Tax for Members of the Armed Forces on Death.*—If an individual dies on or after December 7, 1941, and before January 1, 1948, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations, then—
>
> (a) the tax liability in the case of such individual under chapter 1 for the taxable year in which occurs the date of death is canceled and if the tax (including interest, additions to the tax, and additional amounts) is assessed, the assessment shall be abated and if the amount of such tax is collected (regardless of the date of collection) the amount so collected shall be credited or refunded as an overpayment;
>
> (b) the tax liability in the case of such individual under chapter 1 for any taxable year (ending on or after December 7, 1941) prior to the year in which occurs the date of death during any part of which he was a member of such forces is canceled and if the tax (including interest, additions to the tax, and additional amounts) is assessed, the assessment shall be abated and if the amount of such tax is collected, the amount so collected shall be credited or refunded as an overpayment and if at any time prior to January 1, 1948, the allowance of a

credit or refund of an overpayment of such amount is barred (except for the provisions of section 3801) by the operation of any law or rule of law, a credit or refund of the overpayment of such amount may be allowed or made provided claim therefor is filed before January 1, 1949; and

(c) that amount of tax for taxable years preceding those specified in (a) and (b) above under chapter 1, or corresponding provisions of prior revenue laws, which remains unpaid as at the date of death shall not be assessed, and if any such unpaid tax (including interest, additions to the tax, and additional amounts) has been assessed, such assessment shall be abated and if the amount of any such unpaid tax is collected subsequent to the date of death, the amount so collected shall be credited or refunded as an overpayment.

If such individual and his spouse have for any such year filed a joint return, the tax abated, credited, or refunded pursuant to the provisions of section 421 for such year shall be an amount equal to that portion of the joint tax liability which is the same percentage of such joint tax liability as a tax computed upon the separate income of such individual is of the sum of the taxes computed upon the separate incomes of such individual and his spouse, but with respect to taxable years during which such individual was at no time a member of the military or naval forces of the United States or any of the other United Nations and with respect to taxable years ending before December 7, 1941, the

amount so abated, credited, or refunded shall not exceed the amount unpaid at the date of death. For such purpose the separate tax of each spouse shall be the tax computed under chapter 1 before the application of sections 32, 35, and 466 (e), but after the application of section 31, as if such spouse were required to make a separate return, except that each spouse shall be entitled to one-half of the personal exemption allowed on the joint return.

If an individual whose tax is canceled under section 421 and his spouse filed a joint declaration of estimated tax for the taxable year in which occurs the date of death of such individual, the estimated tax paid pursuant to such declaration may be treated as the estimated tax of either such individual or his spouse, or may be divided between them, according as his legal representative and his spouse may agree. Should they agree to treat the estimated tax paid pursuant to such joint declaration as the estimated tax of such individual, the estimated tax so paid shall be credited or refunded as an overpayment for the taxable year ending with the date of death of such individual.

This section applies only if the death occurs while the individual is in active service. A person is in the active service of the military or naval forces if he is actually serving in such forces, not necessarily in the field or in the theater of war. Personnel in the inactive reserves or on retirement are not in active service. Periods during which a person is absent from duty on account of sickness, wounds, leave, internment by the enemy, or other lawful cause are periods of active service.

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